IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 210 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JAMSU PUNJIYA VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 210 of 1996

MR ADIL MEHTA for Petitioner No. 1

MR ND GOHIL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 25/07/2001

ORAL JUDGEMENT

The appellant accused alongwith four other accused were tried for the offence under Section 398 IPC for the incident which took place on 29.5.1994 at 8.30 P.M. Except the appellant accused, other accused were

acquitted by the learned Judge in absence of sufficient evidence available against them. However, the present appellant accused who was caught on the spot was found guilty for the offence under Section 398 IPC and sentenced to suffer 7 years RI. This order of conviction and sentence dated 9.1.1996 was challenged by the appellant accused by way of this appeal.

On 9.5.1996, learned Single Judge of this Court admitted the appeal and issued notice regarding bail, making it returnable on 5.7.1996. However, another learned single Judge of this Court after considering the facts and circumstances of the case and hearing the Advocate for the appellant accused, rejected prayer of bail. However, accused was permitted to move this Court for fixing early date of hearing of the appeal after paper-book is prepared and the same was ordered to be prepared expeditiously.

Accordingly, after paper book was prepared, it was placed on the Board.

On 19.7.2001 when this matter was placed before me, learned Counsel for the appellant accused was not present and considering the fact that long time has passed in the matter and the accused must have undergone the sentence, learned APP was directed to produce the jail record of the appellant accused for ascertaining as to whether the appellant accused had already undergone the sentence or not.

In pursuance of that order, learned APP Shri Mankad placed on record the jail record of the appellant accused. According to the jail record, the appellant accused is already released from jail, as he had already completed the term of sentence way back on 21st Nov. 1998.

In view of the above, this appeal had practically become infructuous. However, it was submitted by learned Counsel Shri Dave for the appellant accused that this Court should consider the legality and validity of the order of conviction and sentence passed by the trial court because the appellant accused might be falsely involved in other case by the Police. He took me through the relevant reasoning of the learned Judge and submitted that when the accused Nos. 2 to 5 were acquitted and when the present appellant accused alone was convicted for the charges of keeping Tamancha under the Arms Act, then the learned Judge was not justified in convicting the accused under Section 398 IPC, when he (accused) was

not able to take away anything from the place of incident. He had also submitted that in the instant case Tamancha was not sent to the FSL. He also submitted that there were discrepancies in the evidence of the prosecution witness and therefore the benefit of doubt should have been given to the accused.

After carefully considering the reasoning assigned by the learned Judge for convicting accused, I am of the opinion that the learned trial Judge has not committed any error in convicting the accused. The very fact that the accused was apprehended on the spot shows that he was very much involved in the offence. It is a different matter that before he could make use of Tamancha, he was over-powered by the witnesses. Merely because other accused have been acquitted by the learned Judge in absence of sufficient material, that would not mean that the present appellant accused also should have been given benefit of doubt. In the instant case, when the Tamancha was not sent to the FSL, it would not be a ground to acquit the accused because he did not make any use of it. There are some discrepancies in the evidence of the witnesses, but they are minor. Therefore, no importance can be attached to it when otherwise the evidences of the prosecution witnesses were found to be reliable by the prosecution. In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna, J.)

*/Mohandas